
Introduction

The Legislative Audit Committee requested a performance audit of the oversight of special education classification and placement processes by the Office of Public Instruction (OPI). The audit focused on program criteria and monitoring controls related to classifying and providing special education services to children with disabilities. This audit report contains recommendations for further strengthening OPI's oversight role of the delivery of special education services.

Background

The Individuals with Disabilities Education Act (IDEA) (federal law) contains the requirements that govern special education. According to section 20-7-403, MCA, the Superintendent of Public Instruction shall supervise and coordinate the conduct of special education in the state by establishing a planned and coordinated program. The Special Education Division within OPI is assigned this responsibility. Compliance monitoring is OPI's main oversight role in the delivery of special education. Division personnel review special education student records at school district facilities to determine compliance with federal and state laws and rules. The compliance monitoring process can be divided into three general areas: 1) pre-site activities, 2) on-site activities, and 3) post-site activities.

Pre-Site Compliance Monitoring

The two main activities OPI personnel conduct in preparing for on-site compliance monitoring are scheduling the visit and selecting a sample of student records to review. OPI developed a five-year cycle for compliance monitoring of school districts. Each year, school districts on the cycle for that year are contacted to schedule an on-site visit. Prior to the on-site visit, OPI personnel obtain information on special education student populations for each school district. According to policy, monitoring teams are to conduct random reviews of individual student records to ensure compliance with IDEA.

OPI's Sample Selection Procedures

We noted OPI personnel use different sampling procedures that serve different purposes, none of which are random. In addition, OPI staff are not clear on the minimum number of records to review. If the purpose of sampling is to ensure compliance with IDEA, the sample selected should be adequate enough to ensure it represents the entire special education population and minimize the risk of concluding school district processes are compliant when they are not. While policy indicates a minimum of

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one record per district will be reviewed, there is no criteria of how many records should be sampled to provide adequate representation. The smaller the number of records reviewed, the higher the risk for not identifying noncompliance and not meeting the purpose of IDEA.

Schools are Provided Prior Notification of OPI's Sample

Once a sample is selected for review, the list of student records is provided to the school district in advance. For several of the compliance monitoring reviews we observed, teachers were provided an opportunity to get their records in order prior to OPI personnel arriving. The purpose of monitoring is to review documentation with an overall goal of improving school district processes and ensuring compliance. While getting records in order is beneficial, providing the list of student records to school districts in advance may only get the records on the sample list in order. Thus, current procedures do not provide for a true representation of school district processes. This limits the ability of OPI to provide input and technical assistance, as well as impacting school district personnel's opportunity for gaining knowledge on correct practices.

Follow-Up On Previous Findings

A report is prepared for each on-site monitoring review detailing the findings of the OPI review, including required corrective action and technical assistance. Pre-site activities do not include formal procedures for consideration and follow-up on previous compliance monitoring findings or evaluation of the effectiveness of technical assistance. There is no written policy or guidance directing staff to review previous findings. The sampling process does not include a comparison of previous findings to current findings to determine if noncompliance is continuing or trends exist.

Additional Guidance is Needed

We believe staff needs additional guidance. OPI managers need to define the purpose of pre-site sample selection, and then revise policy to ensure record samples are adequate enough to represent the entire population and the requirements of IDEA are met. The sample selection process should also be modified to exclude or further control the pre-selection of records. This should provide OPI more assurance student records reviewed are representative of all records and district practices.

**On-Site Compliance
Monitoring**

A key component of special education is determination of eligibility. In order to be eligible to receive special education services, a child must be a child with a disability. OPI staff review the student record to ensure eligibility forms are contained in the student record and proper procedures were followed. The OPI monitoring process does not consistently ensure proper determination of eligibility. Federal and state laws and rules provide requirements for OPI and school districts regarding determination of eligibility. While OPI monitoring specialists review student records for documentation related to disability criteria and need for special education, the process does not always ensure disability criteria were met.

Without assurance of proper determination of eligibility, there is increased potential for children to be improperly served by special education. While it is the responsibility of the school district to determine eligibility, according to administrative rule, all persons who can assist in identifying the disability and determine services to meet the needs of a child shall participate in the placement process. This rule, along with the mandate for OPI to ensure compliance, illustrates OPI's responsibility for ensuring proper determination of eligibility. We are not recommending OPI "second-guess" school district determinations by deeming children eligible or ineligible; rather, OPI should review school district eligibility determinations to ensure the process and decision-making are based on sound practice and accepted procedures, and followed through to conclusion.

**Review of Records for
Children Determined
Ineligible**

If a child is referred for evaluation and the school district determines the child is not a child with a disability and/or is not in need of special education and related services, an IEP is not developed and the child does not receive services. OPI's current monitoring process does not include a review of records for children who were referred for special education services but were determined ineligible.

We believe review of these records should be an integral part of special education oversight. Without this review, there is increased potential for eligible children to not be properly identified and receive special education services. If children are not properly identified and services

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provided, the school district and OPI are in noncompliance with IDEA. While there are procedural safeguards in place to help ensure rights are protected, an OPI review will strengthen oversight by providing a secondary check on appropriateness of decision-making.

Post-Site Compliance Monitoring

After conducting on-site reviews of student records, OPI personnel compile monitoring results, make compliance decisions, and inform school districts of any required actions. A report is sent to school district administrators outlining positive aspects of the program, required corrective actions, and suggestions for technical assistance and training. Post-site monitoring activities are conducted in Helena.

Determining School District Compliance

OPI monitoring specialists use the student record review form to document their compliance review. The team leader is responsible for compiling the results of the compliance review. After compiling results, OPI staff schedule a decision-making meeting referred to as a “debriefing.” The lead monitoring specialist presents findings from compliance reviews at the division debriefing and the group provides input on whether or not the school district is in compliance. The lead monitoring specialist then prepares the monitoring report for the school district using input from the division debriefing.

Methods Used to Compile Results Vary

Methods for compiling data from student record review forms vary from staff to staff. Variations in methods used for compiling data increase the potential for inconsistent decision-making and inaccurate results. Inconsistency in the process can have negative impacts such as confusing school district personnel on what constitutes noncompliance.

Compliance Standards Do Not Exist

Once monitoring results are compiled, staff must determine school district compliance. There are no established standards to help ensure consistent decision-making. While current policy indicates a division debriefing will discuss whether or not the frequency of concerns is systemic, there is no standard on what constitutes a systemic issue. The purpose of the division debriefing is to provide consistency in division decision-making. However, the general process involves informal discussion and recollection of past decisions.

The process can be strengthened by establishing formal reference points for use in discussions of compliance, including creation of policies to allow for exceptions. If OPI monitoring specialists identify noncompliance or question a school district's eligibility determination, policy on actions to take should be clear in order to help guide OPI personnel.

Autonomy Exists in the Monitoring Process

During our audit, we noted OPI personnel operate autonomously and supervision is limited. In addition, policies and procedures to guide OPI personnel during the monitoring process are limited. As a result, there are variations in procedures used by staff for compliance monitoring.

More guidance, in the form of supervision, will help improve consistency. Various recommendations in this report address specific development of policy. However, establishing policies and procedures is only one step of the process. There must be oversight of ongoing activities to ensure policies are being followed. Having policies and making sure they are followed will help ensure consistency in operations.

Special Education Documentation

Documentation is an important part of the monitoring process, both documentation maintained in student records, as well as documentation maintained by OPI. Student records contain numerous documents including referrals, assessments, evaluation plans, child study team reports, and individualized education programs. OPI has forms available for use by school districts, as well as forms to document compliance monitoring. We noted three areas where we believe changes will help strengthen the program.

- ▶ Standardization of Forms - While federal and state regulations require specific actions to be completed throughout the process, they do not require use of specific forms. As a result, there is no consistency statewide in use of forms. We believe mandating a standard set of special education forms statewide is a logical next step.
- ▶ Student Record Review Form - OPI personnel created a form to document the compliance review of student records called the student record review form. However, the student record review form does not provide clear direction to OPI personnel on proper completion. OPI personnel need guidance for completing the student record review form.

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- ▶ Review of Existing Evaluation Date - According to federal law, whenever a school district meets to determine if a child is or continues to be a child with a disability and in need of special education and related services, they must review any existing evaluation data as part of the process. Based on this federal requirement, OPI personnel developed a form to document the review. However, federal and state law and rules do not require a specific form, only the review. We believe additional staff guidance on reviewing records should be developed and the form eliminated.